

REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. Applicant amends the claims in this case to clarify the relationship of certain components to make the claims allowable over the newly cited reference, or to simplify issues on appeal; no new matter is added in these amendments. After the above amendment, application claims 14, 17, 21-22, 24-25, 27-29, and 31-32 are pending in the application. Application claim 14 is the only independent claim.

Applicant has studied the Office Action Mailed April 19, 2006, and has the following remarks.

35 U.S.C. §§ 102/103

The Examiner has rejected independent claim 14 as anticipated by Hackbarth et. al (US 6,578,327) and has rejected the dependent claims as either anticipated by Hackbarth et al. or as rendered obvious by Hackbarth et. al in combination with at least one of Waters et al (4,344,505), Anghinetti et al (3,896,595), Fuller (4,281,743), Porter (5,628,158), and/or Daw et al (4,832,153).

Applicant respectfully traverses this rejection (a) as none of the cited references show all the elements of the claims, as amended, (b) the non-obviousness of the instant claims is indicated by secondary considerations from declarations previously provided to the Office, and (c) the Hackbarth et. al reference is removed from consideration by the filing of a Rule 131 declaration herewith.

Rule 131 declaration

As was indicated above, all of the Examiner's current rejections rely upon the disclosure of Hackbarth et. al. to provide the elements of the only independent claim. Applicant includes herewith a Declaration of Prior Invention in accordance with 37 C.F.R. § 1.131 ("Rule 131") as a means to testify to a date of actual reduction to practice for the present invention that is earlier than the effective date of the Hackbarth et al. reference.

Applicant respectfully notes that the examiner has presently rejected the pending claims under 35 USC §102(e)/§103 which is a rejection which may be overcome by the submission of a Rule 131 declaration so long as the claims are not directed to the "same patentable invention" as the reference (See MPEP §715).

Further this Declaration is timely submitted after Final Rejection as Appeal has not yet been filed and there are good and sufficient reasons for the filing after the Final Rejection since the Hackbarth et al. reference was not previously cited by the Examiner against the claims, or even previously mentioned as relevant and is clearly necessary to evidence prior reduction to practice.

With regards to a 35 USC §102(e) rejection, Rule 131 states that a reference can be antedated by providing a suitable declaration in which the "showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence. . . ." 37 CFR § 1.131(b).

Applicant asserts that the enclosed Declaration and Exhibits (which serve as corroboration to the statements of the Declaration) are sufficient to establish prior invention as they show creation of a prototype of the device (actual reduction to practice) prior to June 1, 2001. (See e.g.: Reese v. Hurst 661 F.2d 1222, 1225 (CCPA 1981) "Independent corroboration

may consist of testimony of a witness, other than the inventor, to the actual reduction to practice or it may consist of evidence of surrounding facts and circumstances independent of information received from the inventor.”)

As none of the other references are even alleged to show elements of independent claim 14 and the included Declaration appropriately demonstrates actual reduction to practice prior to the critical date of Hackbarth et al., Applicant respectfully requests the Examiner’s rejection of the pending claims be withdrawn and that this case be allowed to continue to issuance without need for Appeal.

Hackbarth et. al. fails to show all elements of independent claim 14

Even if the Examiner were to maintain reliance on Hackbarth et al., The Hackbarth et. al reference fails to show all the elements of claim 14.

In particular, the device of Hackbarth et al. is not used in conjunction with an existing attic access having an opening and a trap door. The door of Hackbarth is not part of the existing access, but is part of, and attached to, the scuttle that Hackbarth adds to an existing open hole into an attic.

The difference is apparent. The device of the instant claims is used in conjunction with an existing attic access which has an opening and a trap door for closing the opening. The device then provides for a frame placed surrounding the existing attic access opening and a lid placed onto the frame. The device of Hackbarth et. al. replaces or eliminates the trap door in the existing attic access, replacing it with its own door and scuttle device which is permanently attached into the opening (See FIG. 2 of Hackbarth et al.). Because the claims discuss there being an existing access with an existing trap door, Hackbarth et al. does not show all elements of the claim as it fails to show an existing trap door.

In order to further clarify this difference, Applicant has amended claim 14 to make clear that the existing access comprises an existing opening and an existing trap door which are the component parts of it. Applicant asserts that this meaning was clear from the prior language as the trap door and opening were both part of an existing access (and therefore must have both existed previously themselves), but has made this amendment simply to eliminate any possibility of confusion and it therefore presents the claims in better form for consideration on appeal by such elimination.

Dependent claim 28 and 29

The Examiner has not provided for any indication all the elements of these claims are shown and his cited combination with regards to claim 29 is clearly unworkable.

Applicant asserts that Examiner has not presented a prima facie case of obviousness or anticipation and that the current claims are not obvious or anticipated in light of the above combination.

With regards to claim 28, an attic hatch type trap door is a conventional device comprising a cover which is removable from the opening and rests on a lip (see paragraphs 35 and 36 of the instant application). The device of Hackbarth et al. does not have an existing trap door at all, and clearly does not have a conventional hatch as the only door (16) it shows is clearly hinged to the scuttle permanently installed into the access opening. Therefore it is impossible for Hackbarth et al. to anticipate claim 28 as it clearly lacks all elements.

With regards to claim 29, while the attic access with which the Waters device is used does include a ladder attached to an existing trap door, adding that ladder to the door (16) of Hackbarth et al. would clearly not work. As was mentioned earlier, the device of Hackbarth et al. lacks an existing trap door and, as is immediately apparent from FIG. 1 of Hackbarth et al.,

the door (16) of Hackbarth is hinged and opens upward. The door (16) is also incapable of opening downward as the lip (46) which is necessary to support the door (16) (See Col. 4 lines 5-7) when closed is in the way. Placing a ladder on the top surface of the door (16) would prevent the door (16) from opening as the ladder would contact sleeve 12 preventing the door from opening. Further, The ladder would also clearly be impossible to use for similar reasons. Therefore, the suggested combination clearly does not function, and therefore cannot render the instant claim 29 obvious as there is no reasonable expectation of success.

Secondary Considerations

The Examiner stated that all Applicant's prior arguments were rendered moot due to the new grounds of rejection. Applicant respectfully traverses such a suggestion at least in as far as claims were rejected only under §103. The Secondary Considerations arguments previously presented to the Examiner by Applicant as part of prior filings are clearly still relevant to the new combinations of references. The previously supplied materials on Secondary Considerations still indicate that it would not have been obvious to one of ordinary skill to generate the device of the instant claims. Since the Secondary Considerations still evidence non-obviousness of the current claims, those claims of the current application only rejected under §103 (Claims 21, 22, 24, 25, 27, 29, 31, and 32) still have evidence of non-obviousness presented which has not been refuted by the Examiner.

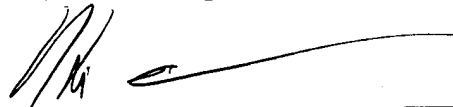
Conclusion

In light of the above, Applicant respectfully requests entrance of the above amendment and allowance of all pending claims so that this case can pass on to issue. In the alternative, Applicant requests entrance of the above amendment to present claims in better form for Appeal.

As a final point, it is believed no fees are due in conjunction with this filing; however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,
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Dated: June 14, 2006

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